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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,163	02/03/2004	Wilmer L. Sibbitt JR.	0023.0016	1880

40271 7590 11/16/2006

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EXAMINER
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BOUCHELLE, LAURA A

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/772,163	Applicant(s) SIBBITT, WILMER L.	
	Examiner Laura A. Bouchelle	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/17/06, 5/19/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species IV, claims 1,2, 5, 6, 8-14 in the reply filed on 10/24/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 112***

2. Claims 10, 12, 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "less than a standard diameter of the syringe family" in claims 10, 12 and 14 is a relative term which renders the claim indefinite. The term "standard diameter" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Shields (US 5401249). Shields discloses a syringe comprising a barrel 11, a plunger 12, a narrow barrel portion 15 that is tapered, and a wide barrel portion 11, and a narrow plunger portion 16 and a wide plunger portion 14. See Fig. 2.

5. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Lineback (US 4936315). Lineback discloses a syringe having a barrel 12 having a plunger 20 with a resilient stopper 18 disposed therein, and a false barrel 16 surrounding the barrel 12. See Fig. 2.

6. Claims 12, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Dysarz (US 6099500). Dysarz discloses a kit of syringes including syringes having different volume capacities but having outside diameters at the proximal end 6 that that are substantially equal. See Fig. 3A.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 6, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shields in view of Page et al (US 4923446). Claims 6 and 9 differ from Shields in calling for the syringe to include a shield in slidable engagement with the barrel. Page teaches a syringe having a slidable shield that reduces the risk of accidental injury from needles (Col. 1, lines 25-29). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Shields to include a slidable shield as taught by Page to reduce the risk of accidental injury from needles.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lineback in view of Page et al (US 4923446). Claim 11 differs from Lineback in calling for the syringe to include a shield in slidable engagement with the barrel. Page teaches a syringe having a slidable shield that reduces the risk of accidental injury from needles (Col. 1, lines 25-29). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Lineback to include a slidable shield as taught by Page to reduce the risk of accidental injury from needles.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dysarz in view of Lineback. Claim 14 differs from Dysarz in calling for the barrel to be surrounded by a false barrel. Lineback teaches a syringe having a barrel 12 surrounded by a false barrel 16 that allows the syringe to be attached to a fluid source (Col. 8, lines 39-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Dysarz to have a false barrel as taught by Lineback so that the device can be attached to a fluid source.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125.


The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
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